

REMARKS

This Reply is filed responsive to the Office Action mailed 5 January 2010 wherein Claims 1-7 and 20-25 were rejected. The Office Action rejected Claims 20-25 under 35 U.S.C. 112, second paragraph due to potentially indefinite language in Claims 20 and 23. Moreover, the Office Action rejected Claims 1-7 and 20-25 under 35 U.S.C. 102(b) in view of Smith (US Patent 4,344,264). By way of this Reply, Applicants have amended Claims 20 and 23 to render the rejections under 35 U.S.C. 112 moot. Additionally, Applicants respectfully traverse the rejections under §102(b) for at least the reasons discussed below.

Beginning with the rejection for indefiniteness, Applicants respectfully submit that the amended Claims 20 and 23 clearly and distinctly claim the subject matter of the invention. Applicants request withdrawal of the rejections under 35 U.S.C. 112.

Applicants appreciate the Office's effort to ensure quality patents issue after thorough consideration of the prior art. As indicated by Applicants submission of the Smith patent in an Information Disclosure Statement, Applicants have been aware of Smith's disclosure and consider the pending claims to be patentable over the same. In the interest of efficiency, the remarks herein will focus on independent Claims 1, 20, and 23. The dependent claims are considered to be patentable for at least the reasons supporting the independent claims. Further distinctions may be identified in future correspondence should the same become necessary.

Before addressing the issues related to the independent claims rejected under 35 U.S.C. §102, Applicants respectfully summarizes the well established requirements of a *prima facie* case of anticipation under 35 U.S.C. §102. For example, anticipation requires a single reference that identically shows every element of the claimed invention. *Diversitech Corp. v. Century Steps, Inc.*, 7 USPQ2d 1315, 1317 (Fed. Cir. 1988) (emphasis added). Additionally, the Federal Circuit has stated that the single reference must disclose each element of the claimed invention arranged as in the claim. *Linderman Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984). And more recently, the Federal Circuit has further explained the anticipation standard to require that "an anticipating reference must describe the patented subject matter with sufficient clarity and detail to establish that the subject matter existed in the prior art and that such existence would be recognized by persons of ordinary skill in the field of the invention." *Crown Operations Int'l, Ltd. V. Solutia Inc.*, 62 USPQ2d 1917, 1921 (Fed. Cir. 2002). Accordingly, if an applicant can establish that at least one claimed element is not present in the single reference, that one or more claimed elements are not arranged in the single reference in the manner claimed, or that at least one claimed

element is not disclosed in the single reference with sufficient clarity, the rejections under 35 U.S.C. §102 of each claim including those elements have been overcome.

With respect to Claim 1, Applicants respectfully submit that Smith fails to disclose each and every element of Claim 1 recited in the manner recited in Claim 1. The Office Action asserts that Smith discloses “at least one steel beam 34 connected to the outer surface of the concrete plate along the longitudinal axis of the concrete plate.” The Office Action refers to the abstract of Smith for disclosure of this element. Applicants have reviewed the abstract and the remainder of Smith’s disclosure and respectfully submit that the metal liner disclosed by Smith fails to disclose, teach, or suggest a system including “at least one steel beam connected to the outer surface of the concrete plate” as recited in Claim 1. On its face, Fig. 1 of Smith reveals at least one inadequacy in its disclosure. The metal liner 34 in Smith is coupled to the inner surface of the concrete wall 14. It is not connected to the outer surface. Moreover, Figs. 1-3 and associated description reveal that the metal liner 34 is anything but a “beam” as recited in Claim 1. While both are made of steel, the liner is a continuous, wide structure adapted to provide a water barrier along the bottom edges of the container. A “beam” by definition is different from a liner, as will be understood by one of ordinary skill in the art. As recited in Claim 1, the secondary container comprises “a plurality of prefabricated wall panels configured to be adjoined in a side-to-side fashion.” Each of the panels comprises a concrete plate and at least one steel beam. The liner 34 of Smith fails to disclose such a configuration adapted for adjoining side to side as recited in Claim 1. More specifically, Smith teaches away from such an adaptation as the liner 34 of Smith is intended to provide a liquid seal around the periphery. Accordingly, one of ordinary skill would not be motivated to modify Smith to utilize distinct steel beams rather than the continuous steel liner 34. For at least these reasons, Applicants respectfully submit that Claim 1 is not anticipated by the Smith reference. Similarly, Applicants respectfully submit that Claims 2-7, which depend from Claim 1, are patentable for at least these same reasons. Applicants respectfully request withdrawal of the rejections of Claims 1-7 under 35 U.S.C. §102.

With respect to independent Claim 20, and its dependent Claims 21-22, Applicants respectfully reiterate the foregoing paragraph adapted *mutatis mutandis*. In the interest of brevity, Applicants note the analogies between Claim 1 and Claim 20 and the application of the foregoing discussion to Claim 20. For at least the reasons provided in support of Claim 1, Applicants respectfully submit that Claims 20-22 are patentable over the Smith reference. Withdrawal of the rejections of Claims 20-22 under 35 U.S.C. §102 is respectfully requested.

With respect to Claim 23, Applicants respectfully traverse the rejection and the characterization of the Smith disclosure. The Office Action asserts that Smith discloses a “roof structure comprising a plurality of prefabricated roof panels adjoined in a side-to-side fashion, each of the roof panels comprising: a concrete plate having an inner surface, and a steel truss structure under the inner surface of the concrete plate.” The Office Action relied upon column 4, lines 10-12 from Smith for this disclosure. The asserted passage from Smith states, “A dome shaped roof 42 constructed of concrete or steel is supported on the upper end of the concrete wall 14 of the tank structure.” Smith fails to disclose or teach the elements of Claim 23 for various reasons. For example, Smith fails to disclose a roof panel comprising a steel truss structure, a barrier layer, and a concrete plate. In contrast, Smith discloses merely that its roof is made of steel or concrete. Moreover, Smith fails to disclose a truss structure of any kind for its roof, relying instead upon a dome shaped roof. Still further, Smith fails to disclose or teach the final element of Claim 23 and the Office Action fails to assert where Smith alleges to disclose such element. Specifically, Smith fails to disclose that its roof is “configured so that a plurality of roof panels may be adjoined in a side-to-side fashion so as to form a roof.” Applicants respectfully submit that Smith is silent as to the manner of constructed its dome-shaped roof, but it is specifically not taught to be by adjoining multiple panels as recited in Claim 23. For at least these reasons, Applicants respectfully submit that Claim 23 is not anticipated by the Smith reference. Similarly, Applicants respectfully submit that dependent Claims 24 and 25 are patentable for at least these same reasons. Applicants respectfully request withdrawal of the rejections of Claims 23-25 under 35 U.S.C. §102.

(continued)

In this Reply, Applicants have addressed each and all of the issues raised in the Office Action. Applicants respectfully submit that the amendments above overcome the rejections under §112 and that a *prima facie* case of anticipation has not been established, as described above. Accordingly, Applicants believe that this application is in condition for allowance. If the Examiner has any questions, or if a telephone interview would in any way advance prosecution of the application, please contact the undersigned attorney of record.

Respectfully submitted,

/Douglas W. McArthur/

Douglas W. McArthur
Reg. No. 50,795
Attorney for Applicants

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ExxonMobil Upstream Research Company
P.O. Box 2189
CORP-URC-SW359
Houston, Texas 77252-2189
Telephone: 731-431-4657